IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5429 OF 2001

Yeshwant @ Ashok Fakirbhai Patel ... Petitioner

Vs.

Dhansukh Fakirbhai Patel
& Ors. ... Respondents

Mr. B.D. Joshi for the petitioner.

Ms. Bhavna Shah for respondent 1.

Mr. G.S. Kulkarni for respondents.4 to 7.

CORAM: SMT. RANJANA DESAI, J.

DATED: 3RD MAY, 2005.

P.C.:-

1. This writ petition was disposed of by me on 21/12/2001. A direction was given to the Resident Deputy Collector, Silvassa to hear the parties and find out whether respondent 1 - Dhansukh Patel can be given a suitable right of way to approach his property. It was clarified that respondent 1 - Dhansukh Patel shall not be given the right of way through the property of the petitioner - Yeshwant Patel. The Resident Deputy Collector was directed to decide the issue strictly in accordance with section 136 of the Dadra and Nagar Haveli Land Revenue Administrative Regulations, 1971 (for short, "the said Regulations, 1971"). Section 136 of the said Regulations, 1971 reads as under:

"136. (1) The Mamlatdar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey number.

(2) In deciding such claims, the Mamlatdar shall have regard to the needs of cultivators for reasonable access to their fields.

(3) The Mamlatdar's decision under this section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Regulations.

(4) Any person who is aggrieved by a decision of the Mamlatdar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Mamlatdar's decision, such decision shall not be subject to appeal or revision."

2. Having regard to section 136(1) of the said Regulations, 1971, I have stated in my order dated 21/12/2001 that Dhansukh Patel should not be given a right of way through Yeshwant Patel's property. I am informed that thereafter pursuant to my order, the Resident Deputy Collector, by his order dated 1/2/2002 gave a right of way to respondent 1 - Dhansukh Patel.

The relevant portion of the said order reads thus:

> "The right of way is decided to be given to Shri. Dhansukhbhai Fakirbhai Patel, to approach his land Survey No.336/1/p from over the boundaries of Srv. No.335/1/p of Shri. Fakirbhai Dahayabhai Patel and Survey, No.335/2/p of Shri. Yashwantbhai Fakirbhai Patel, for agricultural purpose to visit his agricultural land as required in natural course."

3. A clarification was issued by the Resident Deputy Collector on 27/3/2002. The said clarification reads thus:

> "Since the right of way provided also goes from over the boundaries of the land of Shri. Nileshbhai Fakirbhai Patel, in the last para of order referred to preamble (1) above, the words "Survey No.336/1/P of Shri. Nileshbhai Fakirbhai Patel may also

be added. This rectification is made in the spirit of the orders dated 1.2.2002 as referred above and on the basis of Map provided by Survey and settlement office on 26.3.2002 (Enclosed.)"

4. It appears that the dispute between the parties continued and, thereafter, two writ petitions came to be filed in this court. One letters patent appeal also came to be filed in this court. Respondent 1 - Dhansukh Patel has preferred a revenue appeal before the Collector, Dadra and Nagar Haveli, against the orders passed by the Resident Deputy Collector on 1/2/2002 and 27/3/2002. I am informed that the said appeal is pending.

5. This writ petition is placed before me for speaking to the minutes on a precipe filed by Ms. Shah, the learned counsel appearing for respondent 1. Clarification is sought as regards the words "property of the petitioner" found in paragraph 3(ii) of my order dated 21/12/2001. Affidavit and counter-affidavit have been filed by the parties.

6. I have heard the learned counsel appearing for the parties. A serious grievance is made by Ms. Shah, the learned counsel appearing for respondent 1 - Dhansukh Patel that my order dated 21/12/2001 is not being implemented though it holds the field. Mr. Joshi, the learned counsel appearing for the petitioner - Yeshwant

Patel says that his client would co-operate in implementation of my order. Mr. Kulkarni, the learned counsel appearing for respondents 4 to 7 has shown me a map on which the access given to respondent 1 - Dhansukh Patel is marked in red. The said map is taken on record and marked 'X'. The learned counsel for respondent 1 - Dhansukh Patel and the petitioner - Yeshwant Patel had a look at the map. Both sides state that they have no objection to such an access being given. I, therefore, direct the Resident Deputy Collector to submit a report to this court as to whether my order dated 21/12/2001 is implemented or not. If it is not implemented then, he should state why it is not implemented. The Resident Deputy Collector can, of course, take the help of the surveyors, who are attached to his office. The Resident Deputy Collector may also state whether there is any D.P. Road touching the property of respondent 1 - Dhansukh Patel. If the parties have no objection to the access, which is marked in red on the map, then it is the duty of the Resident Deputy Collector to see that that access is made available to respondent 1 - Dhansukh Patel. The Resident Deputy Collector should submit his report to this court within a period of six weeks from the date of receipt of this order by him.

7. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)